

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND 99 CENTS
ONLY STORES LLC**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and 99 Cents Only Stores LLC (“99 Cents”). APS&EE and 99 Cents shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 99 Cents is a California limited liability company which employs ten (10) or more employees and is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that 99 Cents sold the Garden Ease Hedge Shears, including 21” 58-715621 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”) without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP and DBP are potentially subject to Proposition 65 warning requirements because DEHP is listed as known to cause cancer and reproductive toxicity, and DBP is listed as known to cause birth defects and other reproductive harm.

1.2.2 On June 14, 2018, a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, was provided by APS&EE to 99 Cents,

Momentum Brands, Inc. and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

99 Cents denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that 99 Cents has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by 99 Cents but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

1.4 No Waiver

Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Agreement. By executing this Agreement and agreeing to provide the relief and remedies specified herein, 99 Cents does not admit that the Notice or any other action that may be filed against it in the future under Proposition 65 or any other cause of action is not preempted by Federal law. 99 Cents reserves all of its rights and defenses with regard to any claim by any person under Proposition 65 or otherwise, including the defense of federal preemption.

1.5 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.6 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party's counsel.

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2. **INJUNCTIVE RELIEF**

2.1 **General Warning Obligation**

As of the Effective Date, 99 Cents shall not distribute, supply, and/or sell the Products in California unless clear and reasonable Proposition 65 warnings are provided with each unit with the following specific warning with the capitalized and emboldened wording:

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”

If it has reason to believe the Products contain additional chemicals listed under Proposition 65, then 99 Cents may use the word “chemicals” in place of “a chemical”. Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

2.2 **Post-August 30, 2018 Warning**

For Products manufactured after August 30, 2018, 99 Cents shall use the following warning with the capitalized and emboldened wording:

WARNING: This product can expose you to chemicals, including DEHP, known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

2.3 Changes In Warning Requirements

If modification or amendments to Proposition 65 or its regulations after the effective date are inconsistent with, or provide warning requirements or options different from those set forth above, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, 99 Cents shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$375) for APS&EE.

99 Cents shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,125.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$375.00. 99 Cents shall remit the payments within fifteen (15) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE’s Fees And Costs

99 Cents shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, 99 Cents shall issue a check or money order made

payable to “Law Offices of Lucas T. Novak” in the amount of fifteen thousand five hundred dollars (\$15,500.00). 99 Cents shall remit the payment within fifteen (15) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 APS&EE’s Release Of 99 Cents

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases 99 Cents, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its all upstream and downstream entities in the distribution chain of the Products with 99 Cents and all predecessors, successors, and assignees of any of them (collectively “Released Parties”), from any violation of Proposition 65 regarding the failure to warn about exposure to DEHP and/or DBP or any other statutory or common law claims for costs, attorneys’ fees, damages, losses, claims, or injunctive relief regarding the failure to warn about exposure to DEHP arising in connection with the Products manufactured, distributed, sold, or offered for sale by 99 Cents prior to the Effective Date.

4.2 99 Cents’ Release Of APS&EE

99 Cents, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against 99 Cents in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and Notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

<p>TO 99 CENTS: Patrick J. Cafferty, Jr., Esq. Munger, Tolles & Olson, LLP 560 Mission Street, 27th Floor San Francisco, CA 94105</p>	<p>TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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8. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: _____

By: _____
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 9/5/18 _____

By: M. M. K. _____
Authorized Representative of 99 Cents Only Stores, LLC

8. **COUNTERPARTS**

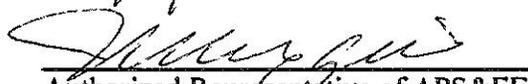
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